



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2023-001291
HUJ53997/2022

THE IMMIGRATION ACTS

Heard at: Field House
On: 14 June 2023

Decision and Reasons Promulgated
On: 17 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MS A C L
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy of Counsel
For the Respondent: Mr A Basra, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines and she appealed against the decision of the respondent dated 23 June 2022 to refuse to grant her leave to enter the United Kingdom pursuant to paragraph 276ADE of the Immigration Rules. First-tier Tribunal Judge S PJ Buchanan in a decision dated 2 May 2023 dismissed the appellant's appeal under the Immigration Rules.
2. Permission to appeal was granted by the First-Tribunal Judge stating that it is arguable that the Judge made an error of law when he concluded that the

sponsor's issuance of two powers of attorneys to her sister and parents, essentially means that the sponsor has conferred day-to-day decision-making to her sister and grandparents.

3. First-tier Tribunal Judge Ms G.A Black dismissed the appellant's appeals under the immigration rules and Article 8 of the European Convention on Human Rights and stated the following in her decision.
4. It was been accepted by the respondent that the sponsor is present and settled in the United Kingdom and has taken responsibility for providing financial support for the appellant since her birth. She has paid for her school and medical fees. The appellant has been living with her aunt and grandparents and that there has been no difficulties with that arrangement. The sponsor has maintained regular contact with annual visits with her daughter. The evidence demonstrates that evidence of video calls and photographs as evidence of emotional ties as between the appellant and the sponsor. The Judge accepted these facts upon which decision is based.
5. The Judge accepted that the appellant's aunt, before she left for Canada she acted as the appellant's guardian as she described herself as her role. This is not consistent with the sponsor's claim that she has had sole responsibility for the appellant. The appellant's grandparents continue to care for the appellant on a day-to-day basis. The sponsor's decision taken in 2022 to create two powers of attorney naming her sister and parents to act as her attorneys in respect of the appellant's passport renewal, education and health is not consistent with sole responsibility. The Judge noted that the sponsor in her evidence stated that she took this step so as to enable her sister and her parents to take decisions about those issues without requiring her permission. The sponsor stated that it was to make decisions easier so she would not have to return to the Philippines to give her permission personally.
6. It was argued on behalf of the appellant by Mr Paranjorthy that the other of attorney was to facilitate the administration of decisions, rather than any transfer of parental responsibility. The Judge stated that it seems to her that this is precisely what the document does. It places the sister and her parents in a position where they can take and make decisions relating to appellant's education and health which is not consistent with the sponsor's claim that she has sole responsibility.
7. It is accepted that in respect of issuance of passport the power of attorney document is specifically geared towards its facilitation. However giving power of attorney for the appellant's education and health covers a wide range of decisions which are not limited to put into place the sponsor's decisions. The attorneys are empowered to make decisions themselves.
8. The sponsor failed to give any clear explanation as to why she created the power of attorney in 2022, at which time she would have been contemplating this application. I find that the sponsor wished decision making for the appellant and facilitating easier for her and for the grandparents so that they could make

decisions without her permission which mirror the actual circumstances in existence for the appellant.

9. In respect of Article 8, there is no exceptional circumstance of consequences or undue hardship for the appellant of the sponsor or grandparents. The status quo is maintained and the sponsor can continue to provide financial support and make visits to see the appellant. The decision is proportionate.

The hearing

10. It was argued by Mr Paramjorthy that the power of attorney was not a transfer of parental responsibility. The Judge erred when he said that parental responsibility was transferred to the sister and grandparents. He accepted however that it was a general power of attorney and not limited passport renewal or other such administrative acts but that it was a general power of attorney to make decisions for the appellant. He submitted that the sponsor continued to send money to the appellant and had active contact with tutors of the school.
11. Mr Bashir on behalf of the respondent stated that the general power of attorney also gives authority to the appellant's grandparents for the appellant's health and education. The power of attorney enables the sister and grandparents to act on the appellant's behalf without the sponsor's permission. The sister was moving to Canada and the reason for the power of attorney to someone who was moving out of the country is curious. He said that the Judge reviewed all the evidence and tested it and found that the sponsor did not have sole responsibility for the appellant.
12. In the respondent's review, the case of **TD** states that sole responsibility is a factual matter which is continuing control of the appellant and that adequate reasons have been given by the Judge finding that the appellant does not have full responsibility for the appellant.

Grounds of appeal

13. The Judge accepted that the sponsor has taken responsibility for providing financial support for the appellant since her birth and paid school and medical fees. The Judge further accepted that the sponsor has maintained regular contact and annual visits to her daughter and accepted that there was sufficient evidence of emotional ties, in the form of video calls and photographs, between the appellant and sponsor.
14. The Judge erred materially in law by finding that the sponsor's issuance of two powers of attorney's to her sister essentially means that the sponsor has conferred a day-to-day decision-making to her sister. The sponsor's evidence was that she had merely provided power of attorney to facilitate the change of schools and applications for passports. The Judge does not explain with any clarity as to why this evidence of the sponsor was rejected.
15. The second ground of appeal is that the judge failed to attach sufficient weight to the grandparents ill-health and furthermore the appellant was a child and

provided a statement in support and did not support the judge's rationale that no weight could be attached to the appellant's evidence.

Findings as to whether there is an error of law in the decision

16. The background of this case is that the appellant is the child of the sponsor who is settled in the United Kingdom. She initially lived with her father for 3 years and then her parents separated. Since she has been living with her aunt and grandparents for the last 7 years. She attends school. The sponsor provides all financial support for her education and health. She made a power of attorney document in 2022 specifically so as to facilitate her relatives in the Philippines, to obtain a passport for the appellant. A second power of attorney dated 2021 was made to cover education and health of the appellant, and the sponsor appointed her sister and parents as attorneys.
17. The Judge found that the sponsor had not demonstrated that she had sole responsibility for the appellant in the Philippines. This was because the sponsor put into place two powers of attorney for her sister and her parents which give them power to make decisions on the appellant's behalf without reference to the sponsor. It was argued by Mr Paramjorthy that the power of attorney did not transfer parental responsibility to the appellant's aunt and grandparents and the sponsor retained it at all times.
18. The respondent maintains that there is no error of law in the decision referred to the case of **TD TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049** ("**TD**") states that sole responsibility is a factual matter to be decided upon all the evidence in the case. The test as enunciated in **TD** is whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and therefore not 'sole'.
19. It was stated in **TD** that "sole responsibility" cannot sensibly be read in an absolute or literal way. The IAT rejected the argument that "sole responsibility" was only an issue between parents. It could also arise where the child lived with a relative. Significantly, the IAT accepted that a parent who has settled in the UK may retain "sole responsibility" for a child where the day-to-day care or responsibility for that child is necessarily undertaken by a relative abroad. That day-to-day responsibility may include seeing that the child attends school, is fed and clothed and receives medical attention when needed. The IAT identified the mother's financial support and the retention of a close interest in and affection for the child as important to its decision.
20. The Judge evaluated the evidence before him to identify whether the sponsor's responsibility has been relinquished in part or whole to another, such that it should be said that there is shared rather than sole responsibility. The Judge understood that the core issue in sole responsibility is to identify the person, if any, who alone makes significant decisions about the child's upbringing and whose obligation it is to make those decisions. The Judge considered whether responsibility has not been relinquished or abdicated to third parties such as the appellant's grandparents with whom the appellant lives. The Judge considered

sole responsibility as a practical, rather than exclusively legal exercise of control by the sponsor over the appellant's upbringing and whether what is done by the grandparents is done "under the direction of sponsor".

21. The Judge found the sponsor's decision taken in 2022 to create two powers of attorney naming her sister and parents to act as her attorneys in respect of the appellant's passport renewal, education and health was not consistent with sole responsibility. He noted the sponsor's evidence when she stated that she has taken this step so as to enable her sister and her grandparents to make decisions about those issues without requiring her permission.
22. The Judge was entitled to find that the concept of sole responsibility is authority or control over the child's upbringing and that the power of attorney demonstrates that sole responsibility was relinquished in part or whole to the grandparents and therefore it was shared responsibility rather than sole responsibility.
23. The Judge took into account the sponsor's stated purpose for creating the power of attorney was to facilitate the administration of decisions, rather than any transfer of parental responsibility. The Judge stated that it seems that this is precisely what the power of attorney does. It places the sister and her parents into a position where they can take and make decisions relating to education and health of the appellant, which is not consistent with sole responsibility. The Judge noted that while a power of attorney would be necessary in respect of issuance of passport and geared towards its facilitation, however the power of attorney not only covers administrative facilitation but education and health which covers a wide range of decisions. The Judge stated that the grandparents acting as an attorney is not limited to put into place the sponsor's decisions but they are empowered to make decisions themselves without reference to the sponsor. The Judge also took into account the sponsor's evidence, when she stated that she created the power of attorney as she wished that decision making and facilitating easier for her and for the grandparents as they could make decisions without her permission. The Judge was entitled to find that this mirrored the actual circumstances in existence for the appellant's care and control and the decision was not only based on the issuance of powers of attorney but other factors.
24. The Judge accepted that the appellant's sponsor has been sending money to the appellant and that she has a close bond with the appellant. However in **TD** it was found that financial support, particularly sole financial support, of a child is relevant since it may be an indicator of obligation stemming from an exercise of "responsibility" by a parent but it cannot be conclusive. It was further stated in **TD** that while legal responsibility under the appropriate legal system will be a relevant consideration, it will not be a conclusive one. The Judge essentially found that financial support was not conclusive of sole responsibility and took into consideration all relevant the factors in the appeal in his fact findings.
25. The Judge considered what has actually been done in relation to the child's upbringing by whom and whether it has been done under the direction of the sponsor. The Judge found that the appellant grandparents shared responsibility with the sponsor and found on the evidence that the grandparents could make decisions without consulting the sponsor. The Judge was entitled to find that this

permitted decision-making by the sponsor, was not consistent with the concept of sole responsibility.

26. The burden of proof is on the appellant and it is on a balance of probabilities. Therefore, the Judge was entitled to find that the appellant has not demonstrated sole responsibility for the appellant.

27. I find that there is no material error in the decision of the First-tier Tribunal Judge. The Judge gave legally sustainable reasons for his finding that the appellant has not established she has sole responsibility for the appellant. I find that no differently constituted Tribunal would not come to different conclusion on the facts of this case. There is no perversity in the reasoning and conclusion and I uphold the decision.

Decision

Appeal dismissed

Signed by

Deputy Judge of the Upper Tribunal
Ms Chana

Dated this 7th day of July 2023